



TERMS AND CONDITIONS

Issue date:
01 04 2018
Page 1 of 10

1. Definitions

“**Australian Consumer Law**” means the law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

“**Carrier**” means any person or entity engaged on behalf of the Customer for delivery of the Products.

“**Claim**” means any loss, costs, damages, expenses, claims, demands, actions, suits or proceedings (including without limitation for damage to Products or injury to any person) howsoever brought.

“**Customer**” means the person or entity:

- (1) described in the Quotation or Purchase Order; or
- (2) buying Products from or requesting Services be provided by Keycut;

and if there is more than one, Customer is a reference to each Customer jointly and severally.

“**Default Event**” includes any event set out in clauses 17 a. i. to 17 a. vii. of these terms and conditions and any action or event that would constitute a failure to comply with any of the obligations set out in clauses 15 a. i. to 15 a. viii. (inclusive) of these Terms and Conditions.

“**Delivery Date**” means the date agreed between the Customer and Keycut for the delivery of Products.

“**GST**” means the goods and services tax imposed by or under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“**Intellectual Property**” means all forms of intellectual property throughout the world including copyright, patents, designs, trademarks and confidential information, including know-how and trade secrets which Keycut owns or in which Keycut has any legal interest.

“**Invoice**” means the invoice issued by Keycut to the Customer for Services rendered and/or Products supplied.

“**Invoiced Amount**” has the meaning ascribed to it by clause 6. b. of these Terms and Conditions.

“**Keycut**” means Keycut Services Pty Ltd ACN 060 176 703.

“**Limited Licence**” means any terms of use and/or licence conditions that relate to and govern the use of any Products, whether imposed by Keycut or any third party.

“**Manufacturer**” means the person or entity responsible for the manufacture of any Products.

“**PPSA**” means the *Personal Property Security Act 2009* (Cth) and any regulations made pursuant to it. The terms financing statement, personal property, proceeds, purchase money security interest, security interest and verification statement have the meanings given to them under the PPSA.

“**Price**” means the price charged by Keycut supplying Products and/or Services to the Customer.

“**Products**” means products provided by Keycut to the Customer pursuant to these Terms and Conditions and includes any goods or products supplied by Keycut in the provision of any Services.

“**Purchase Order**” means an order for the purchase of Products or the supply of Services placed by the Customer with Keycut.

“**Quotation**” means an estimate, quotation or proposal provided by Keycut to the Customer for the sale of Products or the supply of Services.

“**Services**” means any services performed or supplied by Keycut for the Customer, including but not limited to locksmithing services.

“**Sum Owning**” means the cumulative total of the Prices charged by Keycut to the Customer for all Products and/or Services and any other amounts Keycut is entitled to charge pursuant to these Terms and Conditions which remain unpaid.

“**Trading Terms**” means any terms for the payment of the Price of Products or Services that Keycut may agree to at the request of the Customer to enable receipt of Products or the supply of Services prior to payment. “**Terms and Conditions**” mean the agreement between Keycut and the Customer for the sale or Supply of Products and or Services, the terms of which are set out in this document amended from time to time by Keycut and in any Quotation or Purchase Order.



TERMS AND CONDITIONS

Issue date:

01 04 2018

Page 2 of 10

“**Timetable**” means a timetable agreed in writing between Keycut and the Customer for the provision of Services.

2. Interpretation

- a. In these Terms and Conditions unless a contrary intention appears:
 - i. words importing the singular include the plural and vice versa;
 - ii. words importing one gender include all other genders;
 - iii. an obligation or warranty on the part of two or more persons binds them jointly and severally and an obligation or warranty in favour of two or more persons benefits them jointly and severally;
 - iv. the obligations of the parties described in these Terms and Conditions bind their executors, administrators, successors and assigns;
 - v. a reference to a person includes a natural person, corporation, statutory corporation, partnership or any other organisation or legal entity;
 - vi. a word that is derived from a defined word has a corresponding meaning.
- b. These Terms and Conditions are to be interpreted in accordance with the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland and any courts competent to hear appeals from those courts.
- c. These Terms and Conditions prevail over any oral representations or other conditions that may be communicated orally, or in writing, between Keycut and the Customer.
- d. Waivers or variations to these Terms and Conditions will only have effect if made in writing and given by an authorised person.
- e. The Quotation or Purchase Order, together with these Terms and Conditions, constitute the entire agreement between the Customer and Keycut and the parties agree to be bound by this agreement.

3. About these Terms and Conditions

- a. These Terms and Conditions govern the sale or supply by Keycut of Products and Services to the Customer.
- b. Any Purchase Order placed with Keycut by the Customer and/or any acceptance of a Quotation by the Customer (whether by facsimile, via Keycut’s website, in person or in any other form) will be confirmation of the Customer’s acceptance of and agreement to be bound by these Terms and Conditions.
- c. The Customer agrees that Keycut may amend these Terms and Conditions at any time.
- d. If Keycut makes a change to these Terms and Conditions, then that change will take effect from the date on which Keycut notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Keycut to provide Products and/or Services.

4. Quotations and Purchase Orders

- a. Upon request from the Customer, Keycut will provide a Quotation. The Quotation will be valid for acceptance for the number of days stated on the Quotation. Any Quotation submitted to a Customer will be subject to these Terms and Conditions.
- b. The Customer may accept the Quotation by communicating acceptance of the Quotation to Keycut by email, in writing, via Keycut’s website, orally or as otherwise agreed between the Customer and Keycut.
- c. A Customer may place a purchase order (“Purchase Order”) with Keycut. All such orders placed with, or submitted to, Keycut are able to be accepted or rejected by Keycut, at Keycut’s sole discretion, for any reason.
- d. Variations to Quotations or Purchase Orders must be agreed to in writing by both parties, or by Keycut if a material error has been made by Keycut in relation to the Quotation, and the Customer is notified of that error prior to delivery of the Products or Services.
- e. The acceptance of a Quotation by the Customer or a Purchase Order by Keycut, whether orally, or in writing, will be subject to these Terms and Conditions without exception.



TERMS AND CONDITIONS

Issue date:

01 04 2018

Page 3 of 10

5. Price

- a. The Price for the sale or supply of Products and/or Services is set out in the Quotation or Purchase Order and is inclusive of GST, but exclusive of freight charges and insurance costs, unless otherwise stated. The Price is in Australian dollars unless stated otherwise.
- b. All prices communicated to the Customer in relation to any proposed supply of Products and/or Services are indicative only and are not binding, unless they are confirmed in writing to the Customer by the provision of a Quotation or the acceptance of a Purchase Order by Keycut.
- c. If the Customer pays a deposit for the provision of Services or Products, the deposit is not refundable and the Customer acknowledges that the amount of the deposit is reasonable to cover costs and expenses incurred by Keycut in taking initial steps to comply with the Terms and Conditions. Keycut reserves the right to recover additional costs if the deposit is insufficient to cover losses suffered as a result of the Customer not proceeding with, or breaching, the Terms and Conditions.
- d. Any cancellation by a Customer may incur a cancellation fee in the absolute discretion of Keycut. Without in any way limiting the preceding sentence, any cancellation relating to a made-to-order Product may result in the full Price being charged to the Customer.

6. Terms of Payment

- a. For the provision of Services, the Customer will be invoiced regularly, or, if agreed in writing, at the completion of the provision of the Services. The Customer will be invoiced on the delivery of Products.
- b. The total amount on the Invoice is the "Invoiced Amount".
- c. The Customer must pay in full without deduction or setoff on the date/s determined by Keycut, which may be:
 - a. on delivery/completion of the Goods and/or Services; or
 - b. within seven (7) days from the date of the Invoice; or
 - c. if Trading Terms have been agreed, within thirty (30) days from the date of the Invoice;
 - d. or as otherwise agreed in writing by Keycut.
- d. Keycut may, at any time and for any reason, withdraw or amend the Trading Terms. In the case that Trading Terms are withdrawn, any Sum Owing becomes immediately due and payable by the Customer.
- e. Default interest is payable by the Customer on all late payments at the rate of 10% per annum (or any other rate notified in writing by Keycut to the Customer from time to time), calculated daily from the due date until the date of payment. All expenses, including legal costs (calculated on an indemnity basis), incurred by Keycut in collecting late payments, including the cost of legal proceedings to recover any Sum Owing, must be paid by the Customer to Keycut. Keycut's right to charge default interest is without prejudice to any other rights it has under these Terms and Conditions or by law.
- f. Payment of the Invoiced Amount may be made by cash, cheque, credit card over the internet or Electronic Funds Transfer into an account nominated by Keycut.

7. Delivery of Products

- a. The Customer acknowledges and agrees with Keycut that:
 - i. Keycut may, at the request of the Customer, engage a Carrier on behalf of the Customer for delivery of the Products to the Customer's premises or as otherwise directed by the Customer;
 - ii. Keycut is authorised to execute on the Customer's behalf (whether in the Customer's name or otherwise) such carriage contract, consignment note or letter of appointment for the delivery of the Products and the Customer will be bound by, observe and perform as principal the covenants and conditions of the consignor to the Carrier (including to pay money) as set out in the carriage contract, consignment note or letter of appointment;
- b. Unless the parties otherwise agree in writing, delivery of the Products shall be deemed to have been effected upon transfer of possession of the Products to the Customer on:
 - i. collection from Keycut's premises by the Customer; or
 - ii. collection by the Carrier (from Keycut's premises or otherwise) engaged by Keycut on behalf of the Customer; or



TERMS AND CONDITIONS

Issue date:

01 04 2018

Page 4 of 10

- iii. delivery to the Customer's premises (or premises occupied or otherwise nominated by the Customer) by Keycut.
- c. Keycut will use reasonable endeavours to meet the Delivery Date but Keycut is not and will not be liable for any loss, cost or damage suffered or incurred by the Customer, however it arises, if the Products are not delivered by the Delivery Date.
- d. Delivery may be made in instalments. Each instalment must be deemed a separate sale and any failure by Keycut to deliver any instalment shall not affect the Customer's obligations with respect to any other instalments. Each delivery shall be paid for separately, without regard to any claim with respect to any other delivery or the failure of Keycut to make any other delivery in accordance with its obligations.
- e. Any Product made or built to order requires a lead time as set out in the Quotation. Any lead time stated in any Quotation is an estimate only and is subject to and may vary depending on Product availability.
- f. Unless otherwise agreed, the Invoiced Amount does not include the cost of delivery of the Products including (without limiting the generality of this clause) costs incurred by Keycut arising out of the Customer's late notice of a change to an agreed Delivery Date, or storage charges where Products are not collected immediately upon being available.
- g. The Customer will indemnify and keep indemnified Keycut against all loss, damages, costs and expenses arising out of and incidental to the delivery of the Products.

8. Unavailable Product

- a. If Keycut cannot supply the Product as ordered by a Customer, Keycut will notify the Customer within two (2) days of becoming aware of that fact and shall refund any deposit paid to the Customer. The Purchase Order for those Products will thereafter be cancelled and, to the extent permitted by law, any obligations Keycut would otherwise owe pursuant to these Terms and Conditions will cease.

9. Warranties, Liabilities and Indemnities

- a. Nothing in the Terms and Conditions is intended to exclude the operation of the Australian Consumer Law except to the extent that if the Customer is a company, partnership, sole trader or individual with an ABN, then the Customer acknowledges that:
 - i. it is acquiring the Products and/or Services for business purposes; and
 - ii. in those circumstances, the provisions of the Australian Consumer Law are excluded to the maximum extent possible.
- b. The Customer is responsible for ensuring the Products are appropriate for their intended purposes.
- c. To the extent permitted by law, Keycut will not be responsible for:
 - i. the consequences of any representation or technical advice given by its employees, agents or sub-contractors in connection with the use of the Products and/or Services, and the Customer agrees that all such advice is accepted by the Customer entirely at the Customer's risk;
 - ii. any inaccuracies in any information supplied to Keycut by the Customer.
- d. To the extent permitted by section 64A of the Australian Consumer Law, Keycut's liability to the Customer (whether arising under statute, contract, tort, equity or otherwise) for any defect in the Products or Services, or supply of the Products or Services, is limited, at Keycut's discretion acting reasonably to:
 - i. in the case of Products, the repair of the Products, the replacement of the Products or payment of the cost of repair or replacement of the Products;
 - ii. in the case of Services, the resupply of Services or paying for the cost of supplying services of a similar nature.
- e. The Customer will familiarise themselves with the terms of any third party warranties which may apply to Products and will not deal with Products in any way that could prejudice the efficacy of the warranty.
- f. To the fullest extent permitted by law, Keycut excludes and expressly disclaims any and all liability for any loss, expense, damage or Claims suffered or incurred by the Customer (whether direct, indirect or consequential) arising in any way out of the Products or the manufacture, supply or use of the Products, or the supply of Services, or any negligent act or omission of Keycut, its officers, its employees, contractors or agents, including but not limited to, lost profits, costs and damages sustained or incurred as a result of a claim by a third person.
- g. Keycut is not liable for any loss or damage suffered by the Customer arising out of or in connection with Products or Services or the supply of Products or Services, including (without limiting the generality of this clause):



TERMS AND CONDITIONS

Issue date:
01 04 2018
Page 5 of 10

- i. a failure to use Products in accordance with Keycut's and/or the Manufacturer's use instructions;
 - ii. the removal of defective Products or the delivery of replacement Products;
 - iii. any direct, indirect or consequential loss or damage, any loss of actual or anticipated savings, opportunity, revenue profit or goodwill, or other economic loss;
 - iv. any Claim by a third party against the Customer (or any loss, damages or liability suffered by the Customer as a result of any such Claim).
- h. The Customer will indemnify and keep indemnified Keycut against all Claims arising out of or in connection with:
- i. any of the matters dealt with in clause 9.g. of these Terms and Conditions;
 - ii. the Customer's use of the Products, whether in the Product's present form or as processed or combined with other materials into another form, and against any personal injury or property damage or loss arising out of or in connection with the Services supplied to the Customer;
 - iii. the breach or failure of any Service or Product, by any third party (including, but not limited to, employees, agents or contractors of the Customer).

10. Provision of Services

- a. Keycut agrees to provide the specified Services in accordance with these Terms and Conditions.
- b. Services will include the services specified in the Quotation or Purchase Order and any other services requested by the Customer that Keycut may, at its sole discretion, agree to provide. Any additional agreed Services will incur a further fee which will be determined and calculated by Keycut having regard to its usual Services rates as it determines from time to time, and will be included in the Invoiced Amount.
- c. Unless otherwise agreed, or specified in the Quotation or Purchase Order, Keycut will charge the Customer for the Services pursuant to the actual time taken to provide the Services.
- d. If a Timetable for the provision of Services is agreed in writing, Keycut will use all reasonable endeavours to comply with the Timetable. However, Keycut is not liable for any loss, costs, damages or expenses suffered or incurred by the Customer, howsoever arising, if the Services are not provided in accordance with the Timetable.
- e. Any variation to the Services to be provided detailed in a Quotation or Purchase Order must be agreed in writing between Keycut and the Customer.

11. Provision of Emergency Services

- a. Keycut may supply 24 hour emergency services to the Customer in accordance with the Quotation or the Purchase Order, or in the absence of such documents, in accordance with Keycut's emergency service rates as may be determined by Keycut from time to time.
- b. The Customer agrees to provide Keycut with reasonable access to the Customer's property and any property occupied by the Customer at which the Customer has requested the provision of Services to enable Keycut to carry out Services, emergency services, maintenance, upgrades or for testing purposes. The Customer will provide such assistance as is reasonably required to enable Keycut to maintain, upgrade or test any Products or property the subject of any Services.

12. Provision of Electronic Systems or Products

- a. Keycut may supply electronic locking systems or products to the Customer in accordance with the Quotation or the Purchase Order.
- b. The Customer agrees to provide Keycut with reasonable access to the property where the Products or systems are installed to enable Keycut to carry out maintenance, upgrades and testing. The Customer will also provide such assistance as is reasonably required to enable Keycut to maintain, upgrade or test electronic systems or other Products.
- c. The Customer acknowledges that other costs may be incurred by the Customer in relation to electronic systems or Products, including but not limited to electricity supply and telecommunication expenses. The Customer agrees that it is liable to the relevant service providers in relation to all such costs.



TERMS AND CONDITIONS

Issue date:
01 04 2018
Page 6 of 10

13. Ownership of Products, Risk & Insurance

- a. Keycut:
- i. will not pass to the Customer title in the Products until the Customer pays to Keycut all of the Sum Owing for all Products and Services supplied to the Customer;
 - ii. may, on the occurrence of a Default Event:
 - A. sue the Customer for the Sum Owing notwithstanding that title in the Products has not passed to the Customer;
 - B. enforce its security interest in the Products by exercising all or any of its rights under these Terms and Conditions or the PPSA;
 - C. resell any of the Products and apply the proceeds of sale in reduction of the Sum Owing.
- b. The Customer:
- i. assumes risk in and is responsible for the Products upon delivery to or collection by the Customer, its agents or the Carrier;
 - ii. holds the Products as bailee and fiduciary for Keycut;
 - iii. will hold any proceeds of the sale of the Products on trust for Keycut until the Sum Owing has been paid in full;
 - iv. permits Keycut and its authorised representatives to enter any premises occupied by the Customer for the purpose of inspecting or recovering the Products;
 - v. grants a security interest and/or a purchase money security interest in the Products and all proceeds from the Products to Keycut as security for payment for the Products;
 - vi. grants a security interest over all Products including proceeds and for any other amounts from time to time owing by the Customer to Keycut, and for the performance by the Customer of all the Customer's other obligations to Keycut.

14. Application of the PPSA

- a. The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Agreement.
- b. To the maximum extent permitted by law and to the extent that Chapter 4 of the PPSA may apply to this Agreement, the Customer and Keycut agree the following provisions of the PPSA do not apply to the enforcement by Keycut of its security interest in Products: sections 95, 96, 118, 121(4), 123, 125, 128, 130, 132(3)(d), 132(4), 135, 142 and 143.
- c. The Customer acknowledges and agrees that Keycut may register its security interest in Products in any manner Keycut considers appropriate on the Personal Property Securities Register at any time after this Agreement has been signed or accepted by the Customer and before or after delivery of Products. Registration charges incurred by Keycut when registering a financing statement or a financing change statement may be debited by Keycut against the Customer's credit account with Keycut.
- d. The Customer and Keycut agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.

15. Customer's Obligations

- a. The Customer must:
- i. promptly do anything required by Keycut to ensure that Keycut's security interest is a perfected security interest and has priority over all other security interests in the Products;
 - ii. maintain and keep the Products in its possession or control in good working order and condition and protected against theft, loss or damage;
 - iii. ensure any proceeds of sale of the Products are first applied in satisfaction of the Sum Owing;
 - iv. if the Customer sells or otherwise deals with the Products in its ordinary course of business before the Products are paid for in full then the Customer must perfect any security interest the Customer has in the Products so that the Customer has the highest ranking priority possible in respect of the security interest (such as perfecting a purchase money security interest);



TERMS AND CONDITIONS

Issue date:
01 04 2018
Page 7 of 10

- v. immediately notify Keycut if the Customer becomes aware of any person taking steps to register a financing statement in relation to Products;
 - vi. notify Keycut within five (5) days of any change to the Customer's details as provided in any Quotation or Purchase Order, including any change to the Customer's name;
 - vii. notify Keycut promptly of any change to the Customer's address and contact phone numbers; and
 - viii. notify Keycut immediately of any current or impending changes to the Customer's business including, but not limited to, closure of the business, change of ownership, change of directors and/or shareholders, change of licensee, movement of primary place of business, changes to operations hours and/or any financial action (voluntary or otherwise) such as administration, liquidation or receivership.
- b. The Customer must not:
- i. assign or grant a security interest in respect of any accounts receivable in relation to the Products. Keycut has a security interest in all such accounts receivable as security for the Customer's obligations under these Terms and Conditions;
 - ii. except in the normal course of business, sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Products or any interest in the Products (or purport to do so).

16. Refund and Exchange Policy

- a. If a Customer receives damaged or defective Products, the Customer must notify Keycut in writing, within 48 hours of delivery of Products of the Customer's intention to return the Products. Keycut may investigate that matter and may authorise the return of the Products and endeavour to replace the Products, subject to availability, within 14 days of being notified by the Customer of the intention to return the Products, or at Keycut's absolute discretion, issue a credit note to the Customer, to the value of the Products but Keycut will not be liable for any damage or loss howsoever caused arising from replacement of the Products or issue of the credit note, save that Keycut must comply with all non-excludable obligations under the Australian Consumer Law.

17. Default

- a. The Customer agrees that if:
- i. the Customer fails to pay, when due, any Invoiced Amount to Keycut;
 - ii. the Customer fails in any way to comply with any of the Terms and Conditions;
 - iii. the Customer fails in any way to comply with any Trading Terms;
 - iv. any step is taken to enter into any arrangement between the Customer and its creditors;
 - v. the Customer ceases to be able to pay its debts as they become due or ceases to carry on a business;
 - vi. any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person over the whole or any part of the Customer's assets or business; or
 - vii. in Keycut's opinion, the Customer's credit standing has materially changed,
- Keycut may do any or all of the following (in addition to any other rights Keycut may have):
- A. cancel any incomplete delivery of Products;
 - B. enforce its security interest in the Products by exercising all or any of its rights under the Terms and Conditions or the PPSA;
 - C. require the Customer to immediately pay the Sum Owing or to pay in advance for any further delivery of Products or provision of Services (even if specified otherwise in any invoice or Purchase Order or Quotation or Trading Terms);
 - D. suspend or cease supplying Products and/or providing Services to the Customer (whether or not the Customer has ordered Products and/or Services that have not yet been supplied or provided), until the default has been made good;
 - E. demand that the Products be immediately returned to Keycut at the Customer's expense;



TERMS AND CONDITIONS

Issue date:

01 04 2018

Page 8 of 10

- F. enter the Customer's premises and any premises occupied by the Customer to search for and repossess any Products without further notice to the Customer;
- G. cancel this contract or any other contract(s) with the Customer as Keycut sees fit; and
- H. commence proceedings to recover the Sum Owing.

b. The rights under this clause are without prejudice to any other right or remedy available to Keycut.

18. Intellectual Property

- a. Keycut and others own, retain and reserve all Intellectual Property rights, including copyright in the Products and Services, including without limitation, any works, reports, plans, products or advices produced in connection with the supply of Services, before or during the provision of Services, and any keys, material, methodologies for the security of data, software, know-how, processes or procedures used by Keycut to secure data, that is notified or provided to the Customer.
- b. Except in the provision of Products that Keycut supplies with a licence to use that Product, or unless expressly provided for in the Terms and Conditions, nothing set out in the Terms and Conditions shall be construed as conferring to the Customer any other licence or right by implication or otherwise, under copyright or other Intellectual Property laws.
- c. The Customer has the right to use any works, reports, plans, products or advices produced in connection with the supply of Services, before or during the provision of Services, and any keys, material, methodologies for the security of data, software, know-how, processes or procedure provided by Keycut to the Customer under the Terms and Conditions within the Customer's own business and for the purpose foreshadowed by the Terms and Conditions. Any other use or disclosure of Keycut's Intellectual Property is strictly prohibited.

19. Limited Licence

- a. The Customer acknowledges that certain Products may be sourced from third parties and may include terms of use and licence conditions that relate to and govern the use of those Products .
- b. The Customer agrees and warrants to comply with the terms and conditions of any Limited Licence.
- c. The Customer warrants that it will not infringe any other party's intellectual property rights in any manner whatsoever arising, directly or indirectly, from the Customer's use of any Products.
- d. The Customer agrees to indemnify Keycut and its directors, officers, employees and agents from and against any and all Claims, losses, damages, costs, judgments, expenses and liabilities of any kind (including, without limitation, legal fees) arising out of or in connection with the Customer's breach of any Limited Licence and/or the Customer's infringement of another party's intellectual property rights that attach to any Products.

20. Force majeure

- a. Keycut will not be liable for any loss caused by its failure or delay to supply the Products and/or the Services due to anything outside the reasonable control of Keycut including, but not limited to, acts or omissions of the Customer, breakdown of plant or machinery, shortage of labour, strikes, lockouts, industrial disputes, fire or arson, storm or tempest, pest, theft, vandalism, riots, civil commotions, terrorist actions, war, government restrictions, intervention and/or control, transport delays, accidents or embargoes of any kind.

21. Severance

- a. If any clause or part of any clause of the Terms and Conditions is in any way illegal, invalid or unenforceable, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from these Terms and Conditions without affecting the validity, enforceability or legality of the remaining clauses (or parts of those clauses) which continue in full force and effect.

22. General

- a. The Customer must not assign any rights under the Terms and Conditions without the express written consent of Keycut.
- b. No waiver by Keycut of any default shall be deemed a waiver of any prior or subsequent default.



TERMS AND CONDITIONS

Issue date:

01 04 2018

Page 9 of 10

23. Directors' Personal Guarantee and Indemnity

- a. This clause 23 applies if Keycut supplies Products and/or Services pursuant to Trading Terms.
- b. If the Customer is a company, other than a Public Company (as defined in the *Corporations Act 2001* (Cth)) the Customer must procure the due execution by each director ("the Guarantor") of the Customer to be bound by these Terms and Conditions. The provision of director's guarantees in accordance with this clause 23 is a precondition to the Products and/or Services being supplied by Keycut to the Customer in accordance with the Trading Terms and these Terms and Conditions.
- c. The Guarantor hereby promises:
 - i. that the Customer will comply in all respects with these Terms and Conditions; and
 - ii. to pay to Keycut upon demand all moneys which the Customer owes to Keycut.
- d. The Guarantor indemnifies Keycut against all loss, damage, costs (including legal costs on an indemnity basis) and expenses which Keycut suffers by reason of the Customer's failure to pay any moneys due to Keycut.
- e. If the Guarantor is a trustee of any trust, whether or not disclosed in the Terms and Conditions or any Purchase Order, Quotation or Trading Terms:
 - i. the Guarantor must produce a stamped copy of the trust deed (with any amending documents) with these Terms and Conditions;
 - ii. the Guarantor warrants that it has full power and authority to enter into any agreement with Keycut on behalf of the trust and that the Guarantor is bound by this Agreement both personally and in its capacity as trustee;
 - iii. the Guarantor warrants that, in the case of default of the Terms and Conditions, Keycut can enforce any right or remedy accruing to it (under the Terms and Conditions or otherwise) against any property in which the Guarantor has an interest, whether in its own capacity or as a trustee or beneficiary of any trust.
- f. Where this Guarantee is given by more than one person, their liability is both joint and several.
- g. This Guarantee is a continuing guarantee and indemnity for the whole of the Sum Owing to Keycut from time to time and shall remain in full force and effect until discharged by Keycut in writing and is not affected by:
 - i. the granting of time and other indulgences to the Customer;
 - ii. any variation of the term of supply or the Terms and Conditions;
 - iii. the compounding or waiver of any obligation or right of Keycut against the Customer;
 - iv. any neglect or failure of Keycut to enforce any right against the Customer;
 - v. any failure, in whole or in part, of Keycut to perfect its security interest in the Products or against the Customer.
- h. This Guarantee may be enforced against the Guarantor without Keycut being first required to exhaust any remedies it may have against the Customer or to enforce any security it may hold for the moneys owing.
- i. The Guarantor:
 - i. agrees to allow Keycut to provide credit reporting agencies with all information regarding the Guarantor permitted by the *Privacy Act 1988* (Cth) as amended and any other State or Federal legislation permitting the providing of information to certain persons or entities;
 - ii. consents to Keycut obtaining information regarding the Guarantor from credit reporting agencies; and
 - iii. agrees to provide Keycut from time to time (upon request) with a list of the assets and liabilities of the Guarantor.
- j. The Guarantor must disclose to Keycut full particulars of any current or past instance affecting the Guarantor or the Customer, or any company/business they have been involved with, involving the Customer/Guarantor/company/business being insolvent (whether subject to bankruptcy, administration or a liquidation), the appointment of a receiver or a trustee to them or any property owned by them, entering into any arrangement with a credit or compromise of a debt whether under the *Corporations Act 2001* (Cth), the *Bankruptcy Act 1966* (Cth) or otherwise.



TERMS AND CONDITIONS

Issue date:

01 04 2018

Page 10 of 10

- k. The Guarantor acknowledges and agrees that, notwithstanding any action taken by Keycut to recover or attempt to recover all or part of any moneys owing by the Customer from time to time (including, without limitation, by Keycut proving for any debt in an administration, liquidation or other arrangement affecting the Customer), nothing is to be construed as a waiver or compromise of Keycut's rights to recover the Customer's full liability as against Guarantor under this Guarantee.